

REMARKS

Claims 1-5, 8-16, 21-26, 29-31, 35-38, 40-42, 46-50, 52, 56 and 57 are pending. Claims 1-5, 8-16, 21-26, 29-31, 35-38, 40-42, 46-50, 52, 56 and 57 are rejected. Applicant traverses these rejections and respectfully request reconsideration of the rejected claims in light of the following remarks. Claims 1, 24, 35, and 46 are independent claims. Claims 6-7, 28-29, 32-34, 39, 43-45, 51, and 53-55 were previously canceled, and claims 58-61 were previously withdrawn.

Claim Rejections Under 35 U.S.C. §103

1. Claims 1-3, 8-16, 23-25, 30, 31, 46-48, 52, 56 and 57 are rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent 7,048,984 to Seth et al. ("Seth")

Seth discloses an extrusion formed reticulated netting having reticulated hook fasteners. The netting includes two sets of strands at angles to each other. The netting is formed by a cut and stretch method entailing extruding a base layer having spaced ridges (e.g., hooks or ridges with hook cross-sectional shapes) which are cut at spaced locations. The base layer is then stretched in the direction of the ridges to space apart the cut portions to provide hooks.

Regarding claims 1, 24 and 46, the core contention upon which the rejection is based is that it would have been *obvious to try* to change the size of the fastener disclosed in Seth to achieve a fastener having a head with an overall height that is greater than 55 percent of an overall height of the fastener element, and a ratio of an overall height of the crook to an entrance height that is greater than 0.6, because Seth discloses a hook having a hook height of 556  $\mu\text{m}$  and a hook droop of 292  $\mu\text{m}$ , which is 52.5% of the hook height.

The Examiner now asserts that the claimed touch fastener would have been obvious to try because a person of ordinary skill in the art would understand that increasing a crook area of the fastener component that comes into direct contact with the loop component will result in a stronger fastener component that will engage more loops of a loop component to provide greater resistance against separation. Applicant submits a declaration, filed herewith, by George Provost, a person of considerable experience in the field of hook and loop fasteners, addressing the Examiner's statements. Since the Examiner has raised this new argument with regard to the

obviousness to try rejection, Applicant respectfully submits that the declaration should be made of record for any appeal.

Mr. Provost declares, in contradiction to the Examiner's statements, that "increasing the size of a hook doesn't necessarily improve the load-bearing capability of a hook and loop fastener. In fact, under many conditions, making a hook bigger can result in a decrease in performance." A person of ordinary skill in the art of touch fastener hook design would not make the assumption, as stated by the Examiner, that "increasing the effective area of the hook (area that will engage loops of the loop component) will yield a stronger fastener component," as increasing the effective area of the hook, in general, may lead to difficulties with loop engagement. Even Mr. Provost, a person of greater than ordinary skill in the art of touch fastener hook design, would not consider it obvious to try the proposed modification of the structure of Seth in order to increase hook performance. Seth therefore would not have led the person of mere ordinary skill to the claimed touch fastener configuration.

Applicant has discovered that the claimed touch fastener components have good peel resistance and other performance characteristics, especially when mated with loop materials having open structures, such as those loop materials having a relatively low pile height to filament diameter ratio. The particular combinations of key ratios recited in Applicant's independent claims are not arbitrary, but have been found by Applicant to help enable closures with performance characteristics more typical of woven hook products than molded hook products, but at a much lower overall profile, for reasons that become clear to those of ordinary skill in this art upon reading Applicant's disclosure.

An "obvious to try" argument is erroneously equated to obviousness if (1) the inventor is faced with "numerous possible choices ... where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful" or (2) "the prior art gave only general guidance as to the particular form of the claimed invention or how to achieve it." In re Kubit, (Fed. Cir. 2008-1184). At the time of Applicant's invention, a person of ordinary skill in the art would not have been able to look to the disclosure of Seth and find a finite number of identified, predictable potential solutions to the problem solved by the claimed touch fasteners. Seth fails to suggest or identify the criticality of the dimensions used in the claimed ratios (e.g., whether, in this case, to alter a ratio of an overall

height of the crook, measured perpendicular to the sheet-form base from a lowermost extent of the tip to an uppermost extent of the crook, to an entrance height measured perpendicular to the sheet-form base below a lowermost extent of the tip, or some other ratio of dimensions of the fastener component). As a result, one of ordinary skill in the art could not have pursued the unidentifiable potential solutions with any reasonable expectation of success. For at least these reasons, Applicant respectfully submits that claims 1, 24, and 46 are patentable over the cited art of record and respectfully requests a notice of allowance.

2. Claim 21 is rejected under 35 U.S.C. §103(a) as being obvious over Seth in view of U.S. Patent 6,248,419 to Kennedy et al. ("Kennedy").

Kennedy is cited as teaching laminating a hook fastener product to a backing material. However, As Kennedy adds no teaching relevant to the deficiency of Seth with respect to claim 1, Applicant submits that this claim is patentable at least as depending from a patentable base claim.

3. Claim 22 is rejected under 35 U.S.C. §103(a) as being obvious over Seth in view of U.S. Patent Application Publication US 2004/0068848 A1 to Ausen et al. ("Ausen").

Ausen is cited as teaching a particular fastener element density. However, As Ausen adds no teaching relevant to the deficiency of Seth with respect to claim 1, Applicant submits that this claim is patentable at least as depending from a patentable base claim.

4. Claims 1-5, 8-16, 22-27, 30, 31, 35-38, 40, 41, 46-50, 52 and 56 are rejected under 35 U.S.C. §103(a) as being obvious over Ausen.

Like Seth, Ausen fails to disclose or suggest a fastener element having a head having an overall height that is greater than 55 percent of an overall height of the fastener element ( $J/A > 0.55$ ), and a ratio of an overall height of the crook to an entrance height that is greater than 0.6 ( $C/E > 0.6$ ). Ausen does not recognize that such ratios or combinations of ratios are important for enabling strong, short fasteners that are, e.g., capable of capturing and strongly retaining loops of loop materials having open structures. As with Seth, Ausen provides neither a reason nor direction for making a proposed modification to the prior art shape, nor any indication of

which parameters should be changed to achieve one predictable solution from a finite number of identified potential solutions. Therefore, the inventions recited in claims 1, 24 and 46 would not have been obvious to try in view of Seth, Ausen, or any of the cited art of record.

In view of the foregoing, Applicant respectfully submits that the pending claims are patentable over the cited art of record. Applicant respectfully requests reconsideration of the pending claims and respectfully requests a notice of allowance.

#### CONCLUSION

The Examiner is invited to call the undersigned attorney to discuss any questions regarding this matter.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to amendment.

All fees due are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 05918-0339001.

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Respectfully submitted,

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